

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF  
SRI LANKA**

In the matter of an Application under Article 140 of the  
Constitution for an order in the nature of Writs of  
Certiorari.

1. Sinnasamy Muttia,
2. Ramasamy Manoharan
3. Sarojani Manoharan , all of Natharanpotha  
Kundasale, carrying on business in  
partnership under the firm, style and name  
of "Luckyland Biscuits Manufactures" , of  
having their principal place of business,  
office and factory , at Natharanpotha  
Kundasale.

**Petitioners**

C.A.Writ Application No. 371/08

Vs

Dayapala Hewathenne ,Assistant Director of  
Customs, Sri Lanka Customs ,Colombo 1.

And three (03) others.

**Respondents**

**BEFORE** : **S. SRISKANDARAJAH, J.(P/CA)**

**COUNSEL** : Niran Ankitell  
for the Petitioner.  
Arjuna Obeysekera *SSC*  
for the Respondents.

**Argued on** : 23.02.2011

**Decided on** : 11.07.2011

**S.Sriskandarajah I,**

The Petitioners have imported 24 shipments of vegetable fats and shortenings valued at Rs.38,535,301 and 11 shipments of biscuit wrappers valued at 6,037,287/- between 08.03.2005 and 31.07.2006. The Petitioners submitted that in respect of each of the said shipments the Petitioners' agent submitted duly perfected bills of entry of the goods imported. These goods were released by the Customs to the Petitioners agent after paying the customs duties ,taxes and levies and he removed the same and utilised the same for the manufacture of biscuits. The customs department commenced an investigation into the importation of these goods in August 2006 and an inquiry was held under Section 8(1).

The Respondents submitted that the goods imported by the Petitioner was declared under H.S.Code No 1518 and this was accepted and the goods were released as the true nature of the goods could not have been ascertained by an external examination. Investigation conducted by the customs revealed that the goods falling within H.S.Code 1518.00 cannot be used for human consumption as it contains impurities. It transpired that Vegetable fat CLSP is used as an ingredient in the manufacture of biscuits and falls within H.S.Code 1516.20 and that Shortening STGO12 is used in the manufacture of the cream inside the biscuits and falls within H.S.Code 1517.90 and that the said goods do not fall within H.S. Code1518.00 as declared by the Petitioner. It is the contention of the Respondents that the declaration of a false H.S.Code was done deliberately and with a view of avoiding the payment of an import cess imposed in terms of Gazette Regulation Nos 1377/4 of 25.01.2005 and 1453/4 of 11.07.2006. The total value of the said 24 consignments was Rs. 38,535,301.00 and the value of the cess, calculated at Rs.3 and Rs.6 amount to Rs. 2,047,858.00.

The Petitioners have also under valued the price paid for biscuit wrappers for the purpose of computing the customs duty. In terms of Schedule E of the Customs

Ordinance, all moulds and similar items used in the production of the imported goods should have been added to the price of the end product at the time of importation. However the Petitioners had not added the value of the cylinders, to the price of the wrappers, thus deprived the state the revenue due to it under the law. According to the Petitioners own documents , a sum of Rs. 522,779.00 should have been paid as customs duty.

After an inquiry a mitigated forfeiture of Rs.5,141,274,272/= was imposed on Luckyland Biscuits Manufactures and a mitigated penalty of Rs.25,000/= was imposed on Mr.A.L.M.Shirazdeen Wharf Clerk by order dated 14.09.2007.

The Petitioner in this application has sought a writ of certiorari to quash the order dated 14.09.2007 imposing a mitigated forfeiture on Luckyland Biscuits Manufactures on the basis that the 1<sup>st</sup> Respondent's purported action under Section 47 of the Customs Ordinance is ultra vires. The Petitioner contended that under and in terms of Section 47 of the Customs Ordinance, the 1<sup>st</sup> Respondent has no power or authority to order forfeiture of any goods which had under Section 47 already been delivered by the customs officers and had been removed by the importer. By this act the officers of the Customs Department waived the right to order forfeiture of such goods under any of the provisions of the customs ordinance.

The above contention of the Petitioner has no merits as the Supreme Court had considered this issue in *Toyota Lanka (Pvt) Ltd and another v Jayathilaka Director General of Customs S.C Appeal 49/2008 SC minutes 20.03.2009* and held "that the provision in Section 47 "but if such goods shall not agree with particulars in the bill of entry the same shall be forfeited.." apply to a situation in which by means of a wrongful entry goods are conveyed by stealth, to evade payment of customs duties or dues or contrary to prohibition or restrictions. In such a situation of a wrongful entry and evasion, since the consequence of forfeiture is by operation of law, even if

the officer had delivered the goods upon the submission of a CUSDEC, such good may be seized at any subsequent stage in terms of section 125.”

In this case it is evident that the Petitioners through its agent declared the goods under a wrong H.S.Code deliberately with the view of avoiding the import cess. By the wrongful entry in the CUSDEC the Petitioners attempted to convey the goods by stealth to evade payment of duties.

The Petitioner has also challenged the said order of the 1<sup>st</sup> Respondent on the ground that the 1<sup>st</sup> Respondent has not given any reasons for his order as the said order is liable to be revised by the Minister.

The 1<sup>st</sup> Respondent has given his reasons in his order he has stated in his order that the prosecution has proved that the importer had the knowledge of the correct H.S.Code i.e. 15.16.20 which clearly indicated on the invoice which carry the EDB cess. As such I am convinced that the importer and the declarant had prior knowledge of the correct H.S. Number and failed to inform the correct H.S.Code of the product in the CUSDEC. The Prosecution has proved the short payment of duties and the suspects have not contested.

In the above circumstances the Petitioner’s challenge to the said order fails and this court dismisses this application without costs.

Judge of the Court of appeal